Supreme Court of the United States

October Term, 1943.

No. 389

WAYNE M. NEAL; THE LOUISVILLE DRYING MACHINERY COMPANY; and CITRUS PATENTS COMPANY, - - - - - - - Petitioners,

versus

STATE OF FLORIDA; THE STATE BOARD OF EDUCATION OF FLORIDA; and STATE BOARD OF CONTROL.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA AND BRIEF IN SUPPORT THEREOF.

HUGH AKERMAN,
Counsel for Petitioners.

ARTHUR F. ROBERT,
Of Counsel for Petitioners.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

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v.

STATE OF FLORIDA; THE STATE BOARD OF EDUCATION OF FLORIDA; AND STATE BOARD OF CONTROL.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

This is a petition for a writ of certiorari, brought under Section 237 of the Judicial Code, as amended (28 U. S. C. 344b), to review the final judgment (as amended May 25, 1943) of the Supreme Court of the State of Florida. The petition raises certain federal questions under an Act[1] of Congress approved February 24, 1925 (43 Stat. 970, c. 308;

[1]Printed in the Appendix hereto.

7 U. S. C. 361, 366, 370, 371, 373-376, 380, 382) which is hereinafter referred to as the *Purnell Act,* and under the due process clause of the 14th Amendment of the United States Constitution. In support of the petition, your petitioners showeth:

SUMMARY STATEMENT OF THE MATTER INVOLVED.

1. This suit orginated at Gainesville, Florida, in December, 1940, when the respondents herein jointly filed Chancery Suit No. 1061 C in the Circuit Court of the Eighth Judicial Circuit of Florida in and for Alachua County against your petitioners.

2. The respondent State of Florida is a sovereign State of the United States (R. 1). The respondent Boards of Education and of Control are State governmental agencies, controlling the University of Florida and its Agricultural Experiment Station, which is a department of the University (R. 2). These parties are herein designated as follows: the respondents jointly as plaintiffs; the University of Florida as the University; and the Agricultural Experiment Station as the Experiment Station.

3. Petitioner Wayne M. Neal was a member of the research staff of the University's Experiment Station and, as such, *an employee of plaintiffs* (R. 2, 7). Petitioner Louisville Drying Machinery Company is a Kentucky corporation of Louisville, Kentucky, licensed to do business in Florida (R. 1, 15), and petitioner Citrus Patents Company, a Florida corporation of Orlando, Florida (R. 2, 21). Mr. A. W. Lissauer of Louisville, Ky., is president of both corporate defendants (R. 24). These parties are desig-

nated as follows: the petitioners jointly as defendants; the individual defendant as Neal; the corporate defendants as Louisville Drying & Citrus Patents respectively; and the president of both corporate defendants as Lissauer.

4. This case involves the title of defendant Neal's process patent application which was purchased by Citrus Patents and which is claimed by plaintiffs. The plaintiffs filed the original suit claiming title to the Neal application by virtue of an alleged 1935 oral agreement (R. 3) between Neal and the State Board of Control under which Neal allegedly agreed to assign his application and to which agreement the corporate defendants were alleged to have notice (R. 5). *This 1935 oral agreement and notice of it were the basic issues up to and during trial.*

5. At the close of the evidence, plaintiffs moved to amend the complaint so that it would allege *that Neal was employed to invent* (R. 293-94). This motion, if allowed, would raise *two new issues, namely: an employment* contract *binding Neal to assign;* and *notice of it* (see notice allegation, R. 5). The Chancellor deferred his ruling on the motion until he had reviewed the evidence and marked it "Presented for filing" (R. 294).

6. The Chancellor found, as matters of fact: *first,* Neal was not employed to invent (R. 28); *second,* he had not made any agreement to assign to plaintiffs, the 1935 oral agreement being, if anything, a contract to make a future agreement (R. 28); and *third,* Citrus Patents was a bona fide purchaser for value without notice because, having made inquiry of plaintiffs as to plaintiff's interest in Neal's application, it was lead to believe that, as against plaintiffs, Neal could give a good title and then acted and relied upon such information (R. 28). *The Chancellor therefore denied plaintiff's motion to amend and dismissed the complaint* (R. 30).

7. On appeal, the Florida Supreme Court reversed the Chancellor, holding in effect:

(a) that while Neal's employment was, in its inception, general, it became a specific contract to invent in August, 1933, when project 239[1] was set up under the (unpleaded) Purnell Act and Neal placed in charge of it (R. 308); and

(b) that while Citrus Patents relied upon the misleading statement of the Experiment Station's director "who said in substance that they had nothing more than a gentleman's agreement with Dr. Neal and that if he repudiated that, appellants (plaintiffs) had no way to enforce it," Citrus Patents nevertheless purchased Neal's application with notice of plaintiff's interest (R. 310).

8. Separate petitions for rehearing, filed by the corporate defendants (R. 310-13) and by Neal (R. 314-31), were denied by order of April 13, 1943 (R. 331), when the court forwarded its mandate to the Circuit Court directing it *"to enter an appropriate decree for the appellants" (plaintiffs)*. Neal's subsequent motion for leave to file a second petition for rehearing (R. 331-33) accompanied by such petition (R. 333-38) was denied by order of May 3, 1943 (R. 339). Defendant corporations' second petition for rehearing (R. 339-41) was granted by order of May 25, 1943, the court amending both opinion and mandate by adding the following clause: *"He is further directed to enter such decree as justice and equity may require as to Louisville Drying Machinery Company, and as affecting it*

[1]The evidence established: that the Experiment Station conducted "State sponsored" and "Federally sponsored" projects (R. 42, 249-252); and that project 239, while pleaded as an Official project (R. 2), was, in fact, a Purnell (Federally sponsored) project under an "unpleaded" Act of Congress identified solely as a Purnell Act (R. 140).

and Wayne M. Neal and Citrus Patents Company (R. 341-42).

Defendant corporations' subsequent application for permission to file a third petition for rehearing (R. 342-43) accompanied by such petition (R. 343-46) was denied by order of June 7, 1943 (R. 348-49).

REASONS RELIED UPON FOR ALLOWANCE OF WRIT.

1. This case presents expressly raised, and necessarily raised, Federal questions under the Purnell Act of Congress which have not heretofore been determined by this court.

The *expressly raised* questions involve the effect to be given: *the Purnell Act* in determining whether or not an Experiment Station employee is employed under a general or specific contract when assigned to a Purnell project; *the use of Purnell Funds,* by an Experiment Station to pay the expense of patenting Purnell inventions, in determining whether or not an Experiment Station employee-inventor, is employed under a general or specific contract when assigned to a Purnell project; *and notice of the Purnell Act* in charging a stranger with notice of an employment contract under it. These questions are substantial since the whole case depends upon them.

The *necessarily raised questions* involve the *right of an Experiment Station* or the State interests it represents: *to receive assignments* of Purnell inventions under the Purnell Act as against such right of the Federal interests which administer the Act and furnish Purnell Funds under it; *and to hold Purnell inventions* for their personal benefit without dedicating them to the public at large. These ques-

tions are substantial, first, since they affect the operations of all Experiment Stations in the United States and its territories under the Purnell Act and, second, since they have a vital effect upon the national interests of all citizens of the United States because they deal with the right of such citizens to use Purnell inventions on an unrestricted and royalty-free basis as against the right of either or both an Experiment Station and the State interests it represents to appropriate the invention and charge a royalty for, or place any other conditions upon, its use by citizens of the United States.

2. This case also presents an expressly raised Federal question of substance decided in a way probably not in accord with applicable decisions of this court.

The question raised involves the due process (property) clause of the 14th Amendment of the United States Constitution, since the effect of the decision is to *deny* your *corporate* petitioners a *hearing* by adjudicating an *"issue"* neither joined in the pleadings nor supported by the evidence. A reversal of the decision on this point necessarily involves a reversal of that portion of the judgment which decrees away the title of defendant corporations in the Neal application.

PRAYER.

Wherefore your petitioners respectfully pray: that a writ of certiorari be issued by, and under the seal of, this Honorable Court, and directed to the Supreme Court of Florida commanding that court to certify, and to send to this court for its review and determination, on a day certain to be therein named, a certified transcript of the record and proceedings herein; that the judgment of the Supreme Court of Florida be reversed by this Honorable Court; and

that your petitioners have such other and further relief in the premises as may seem meet and just.

WAYNE M. NEAL,
LOUISVILLE DRYING MACHINERY COMPANY, AND
CITRUS PATENTS COMPANY,
Petitioners,

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